

Article 6. Accessory Uses.

16-601 ACCESSORY USES.

601.1 PURPOSE AND INTENT. It is the purpose and intent of this chapter to:

- A. Maintain neighborhood integrity and preserve the residential character of neighborhoods by encouraging compatible land uses.
- B. Provide residents of the City with an option to utilize their residences as places to enhance or fulfill personal economic goals as long as the choice of home occupations does not infringe on the residential rights of neighbors.
- C. Establish criteria for operating home occupations in dwelling units within residential districts.
- D. Assure that public and private services such as street, sewer, water or electrical systems are not burdened by home occupations to the extent that usage exceeds that which is normally associated with a residence.

601.2 DEFINITIONS. A home occupation is an accessory use by the occupant(s) of a dwelling unit in which goods are produced or traded, or services are rendered as an economic enterprise. Such use shall be clearly incidental or subordinate to the residential use of a dwelling.

PERFORMANCE STANDARDS - DISTRICTS R-1, RP-1, R-2, RP-2, R-3, RP-3, R-4, R-5, RP-5. Home occupations are permitted as an accessory use to a residence only when all of the following criteria are met:

- A. AREA OF USE. Home occupations shall be entirely contained within the interior of a residence and shall not be located in garages or accessory structures on the site. No visible evidence of the business shall be apparent from the street nor surrounding area. Family Day-Care Homes will be allowed to have an outside play area which shall be fenced. A home occupation shall use no more than 20% of the total dwelling unit floor area. Those home occupations which require occasional meetings using more than 20% of the floor space may be permitted, providing such meetings do not occur more frequently than once per month.
- B. EMPLOYEES. The home occupation shall be conducted by family members residing on the premises with no assistance from other individuals or groups.
- C. SALES, REPAIRS, AND LEASING.
 - 1. SALES. The commercial exchange of tangible goods or other items constituting a sale between the proprietor of a home occupation and members of the general public shall not be permitted on the premises of a home occupation. Members of the general public shall not include persons in the home by prior individualized invitation.
 - 2. REPAIRS. The repair of items out of a home occupation may occur only when the delivery and pickup of the items is

conducted by the proprietor of the home occupation or by employees of the home occupation as defined in this section. No trips shall be generated to or from the home occupation by customers with items to be or which have been repaired.

3. LEASING. The exchange of items in a lease agreement between the proprietor of a home occupation or an assistant and a customer shall not occur on the premises of a home occupation.

- D. TRAFFIC AND PARKING. No parking in the public right-of-way shall occur as a result of this home occupation except for occasional meetings. If parking for a home occupation occurs in a manner of frequency causing disturbance to the normal traffic flow for the neighborhood, the occupation shall be considered a business best handled in a commercial district rather than as a home occupation.
- E. CHANGES TO EXTERIOR. The appearance of a dwelling as a residence shall not be altered to the extent that attention is drawn to the structure as a commercial or business operation.
- F. NUISANCE CONTROLS. A home occupation shall not create excessive noise, dust or dirt, heat, smoke, odors, vibration, and glare or bright lighting, which would be over and above that created by a single residential dwelling. The production, dumping, or storage of combustible or toxic substances shall not be permitted on site. Additionally a home occupation shall not create interference or fluctuations of radio or television transmission.
- G. VISITATION. A home occupation may attract patrons, students, or any business related individuals only between the hours of 6 a.m. and 9 p.m. At any time during the day or evening, the parking standards in this chapter shall apply to the activity generated by the home occupation. A home occupation shall also not generate more than six (6) business related visitations per day which shall constitute six (6) arrivals and (6) six departures by vehicle. Family day-care operations shall not generate more than twelve (12) arrivals and twelve (12) departures per day by vehicle. These standards shall not be construed so as to prohibit occasional group gatherings, recitals, or demonstrations. However, such gatherings shall not occur more frequently than once per month and must be held within the visitation hours specified in this chapter.
- H. SIGNAGE. No signage or other forms of advertising pertaining to the home occupation may be placed or painted onto the exterior of the residence or in the yard of a residence.
- I. TEACHING. Teaching or instruction as a home occupation shall be limited to not more than three (3) students at any one time and not more than twelve (12) students per day.

- 601.3 COMPLAINTS. Complaints against home occupations shall be filed with the Codes Administrator and shall be set forth in writing with copies available through the Codes Administrator.

- 601.4 APPEALS. Any individual who is aggrieved by a decision of the Codes Administrator may appeal that decision to the Community Development Committee. An appeal must be filed within 10 days of the decision by the Codes Administrator. The Community Development Committee shall determine whether the judgment of the Codes Administrator was correct. The hearing shall take place within 30 days of the filing date of the appeal. A decision shall be rendered within 30 days from the date of the hearing.
- 601.5 NONCONFORMING OCCUPATIONS. Those home occupations which are presently in operation and which do not conform to these standards, shall have up to a maximum of 90 days from the passage of this chapter in which to comply as determined by the Codes Administrator.
- 601.6 OTHER REQUIREMENTS. Home occupations shall comply with all other local, state, or federal regulations pertinent to the activity pursued. The requirements of a home occupation under this chapter shall not be construed as an exception from such regulations.
- 601.7 PRIVATE WALK OR DRIVE. No private walk or drive serving a District C-1 to M-2 inclusive shall pass through or be located in a District R-1 to C-0 inclusive.
- 601.8 ELIGIBILITY FOR ACCESSORY USE. The determination of the eligibility of a proposed use as an accessory use shall be made by the Codes Administrator and appeal can be made from his/her decision as set out in Section 35.
- 601.9 ACCESSORY USES AND BUILDINGS. Buildings and structures may be erected and land may be used for purpose which are clearly incidental to, and customarily and commonly associated with, the main permitted use of the premises. Such accessory buildings and uses shall be so constructed, maintained and conducted as to not produce noise, vibration, concussion, dust, dirt, fly ash, odor, noxious gases, heat or glare which is injurious, damaging, unhealthful or disturbing to adjacent property or the users thereof and shall be on the premises of the main use.
- 601.10 DISTRICTS R-1 AND R-2
- A. DAY-CARE HOME, GROUP DAY-CARE HOME. Day Care Homes for children provided the maximum number of children does not exceed the following, including the provider's own children under 14 years of age:

# of Children under 18 mths.	Maximum # of Children 18 mths. To Kindergarten Age	Maximum # of Children in Attendance*
0	6	10
1	5	10
2	3	9
3	1	8
*Includes children kindergarten age to age 14.		

The maximum number of children for which a group day care home may be licensed shall be as follows:

# of Adults Providing Child Care	Age of Children Enrolled of	Maximum # of Children in Attendance*
1 Adult	2 1/2 Years to 14 Years of Age	9
	3 Years to 14 Years of Age	10
	Kindergarten Age to 14 Years of Age	12
2 Adults	No more than 3 children under 18 months Not more than 5 children 18 months to Kindergarten age	12
2 Adults	No more than 5 children 18 months to 2 1/2 years	12

B. ACCESSORY BUILDINGS AND STRUCTURES.

Location - Accessory buildings and structures shall be located in the rear yard. The building or structure shall be located at least fifteen feet (15') from the principal building. Accessory buildings or structures less than two hundred fifty square feet shall be located at least five feet from the side and rear property lines. Accessory buildings or structures two hundred fifty square feet or larger shall meet the setback requirement of the zoning district for side and rear yards. No accessory structure may be located on a vacant lot.

1. Number of structures - There may be one detached garage or carport and one detached accessory building used for storage.
2. Size - The maximum size of an accessory building or structure is 1,000 sq. ft. However, in no instance shall the accessory building or structure exceed one-third of the habitable living area of the residence located on the parcel. The height of the accessory structure shall not exceed the height of the primary structure. (Ord. 1841, Sec. 1)

C. FENCES. Fences may be constructed to a maximum height of 8 feet above the average grade level on the property line with the following exceptions and restrictions:

1. A fence may not be constructed in the front yard or beyond the front platted building line.
2. Where there is no platted side or rear building setback line, a fence may not be constructed within 15 feet of the property line along any street right-of-way.
3. Fences constructed beyond platted rear or side yard building setback lines may be constructed to a maximum height of 6 feet above the average grade but not within 15 feet of the property line along any street right-of-way.

4. A permit to install or modify a fence shall be obtained from the Codes Administrator.
5. RP-1 and RP-2 zoning districts may have fences along arterial streets only when approved by the Planning Commission as part of the final development plan approval.
6. Exceptions to the above may occur only when a master fence/screening plan has been approved by the Planning Commission for a subdivision.
7. All fences shall be constructed with the finished side facing outward from the property. The posts and support beams shall be on the inside or shall be designed as an integral part of the finished surface. (Ord. 1811, Sec. 1)

Any pre-existing, nonconforming fence that is replaced 50% or more must come into compliance with the fence ordinance.

- D. ANIMALS. Horses, ponies, cows, chickens or other animals may be kept except that on a lot or tract of less than three acres in size, a special use permit shall be required.
- E. HOBBY ACTIVITY. A hobby activity may be operated as an accessory use by the occupant of the premises purely for personal enjoyment, amusement or recreation, provided that the articles produced or constructed are not sold either on or off the premises.
- F. ADDITIONAL USES. Such additional accessory uses as private swimming pools, gardens, television and radio receiving antennae not exceeding 60 feet in height, signs as permitted by ordinance, parking areas, toolshed not exceeding 200 square feet, and play equipment are permitted. If any of the accessory uses described above exceeds 10 feet in height, it shall be located a distance inside the property line at least equal to one-third its height. Ground-mounted satellite dish antenna are permitted if the following performance standards are met:
 1. Satellite dish antenna as used herein means any parabolic or dish or similar shape antenna constructed for the purpose of communicating or receiving signals from a satellite.
 2. Maximum number per lot - one (1).
 3. Maximum height - thirteen (13) feet.
 4. Maximum diameter - eleven (11) feet.
 5. No antenna shall be located in a front or a side yard.

6. Minimum setback from center of satellite dish to property lines of lot - fifteen (15) feet.
7. Must be ground mounted and securely attached to a concrete pad.
8. All lines, wires or cables serving a satellite dish antenna must be buried underground.
9. The construction of satellite dish type antennas will conform to the Uniform Building Code, as adopted by the Governing Body of the City of Gardner, Kansas. The permit fee shall be paid as established by the Governing Body by Resolution. (Ord. 2019, Sec. 1)

Solar collectors are permitted provided that the following performance standards are met.

1. Roof-mounted solar collectors located on front and side building roofs visible from the public right-of-way shall not extend above the peak of the roof plane where it is mounted and further provided that no portion of any such solar collector shall extend more than 24 inches perpendicular to the point on the roof where it is mounted.
 2. Roof mounted solar collectors located on the rear side of building roofs shall not extend above the peak of the roof plane where it is mounted and further provided that no portion of any such solar collector shall extend more than four feet perpendicular to the point on the roof where it is mounted.
 3. Ground mounted solar collectors shall not exceed 8 feet in total height and shall be located within the rear yard at least 12 feet inside the property line.
 4. All lines serving a ground-mounted solar system shall be located underground.
- G. STORAGE OF EQUIPMENT, MATERIAL OR VEHICLE. Storage shall be permitted of not more than one of the following: a boat, a camping trailer, a pickup camper, a motor home, a recreational vehicle or a hauling trailer, but not in the front yard or the street side of a corner lot. Such storage areas are not required to be paved. No other equipment, material or vehicle shall be stored for more than 24 hours in a thirty-day period in a residential district.

Exceptions from the above may be granted by the Codes Administrator upon approval of plans indicating screening to be installed and setbacks used. Such plans shall meet established standards for protecting surrounding property prior to approval by the Codes Administrator.

- H. TEMPORARY PARKING IN THE DRIVEWAY. A boat, a camping trailer, a pickup camper, a motor home or a recreational vehicle may be parked in the customary driveway for purposes of loading or unloading or trip preparation for a period of time not to exceed 48 hours in a thirty-day period in a residential district.

601.11 DISTRICTS R-3, R-4, AND R-5.

- A. USES. In the R-3, R-4 and R-5 districts, accessory uses are as follows: Parking areas, signs as permitted by this title, recreation areas including tenant-used swimming pools and minor recreation buildings, trash collection centers, power generators, vending machines for tenant use, and other similar uses. Satellite dish antenna shall be allowed provided that installation conforms with the regulations set forth in Section 601.10. Solar collectors are permitted provided that the following performance standards are met.

1. Roof-mounted solar collectors located on front and side building roofs visible from the public right-of-way shall not extend above the peak of the roof plane where it is mounted and further provided that no portion of any such solar collector shall extend more than 24 inches perpendicular to the point on the roof where it is mounted.
2. Roof-mounted solar collectors located on the rear side of building roofs shall not extend above the peak of the roof plane where it is mounted and further provided that no portion of any such solar collector shall extend more than four feet perpendicular to the point on the roof where it is mounted.
3. Ground-mounted solar collectors shall not exceed 8 feet in total height and shall be located within the rear yard at least 12 feet inside the property line.
4. All lines serving a ground-mounted solar system shall be located underground.

601.12 DISTRICTS C-0, CO-A AND C-1.

- A. USES. In the C-0, CO-A and C-1 districts, accessory uses are as follows: Parking areas, signs as permitted by this title, food service and vending machines for tenants only, private garages for motor vehicles, apartment for maintenance personnel, low-level exterior lighting, radio, television or microwave antenna not exceeding 60 feet in height, flagpoles, cooling towers, and other similar uses. Ground-mounted satellite dish antenna shall be no taller than 30 feet in height and shall be located behind the required yard setback of each district. Any satellite dish antenna mounted on the roof of a structure shall not extend more than 13 feet above the roof surface. No such antenna shall be utilized as a sign and any satellite dish of a temporary nature shall not be on the premises over 72 hours. Additional requirement: All roof-mounted satellite dish antenna shall

be required to have a final development plan approved prior to the issuance of any permit such that the antenna is screened from view to the fullest extent possible without interfering with the operation of the antenna. All ground mounted satellite dish antenna shall be required to have a final development plan approval prior to the issuance of any permit if said antenna is proposed to be located within 400 feet of any property zoned R-1 through R-5 as well as any equivalent planned zoning district. Said plan shall require the screening of the antenna to the fullest extent possible without interfering with the operation of the antenna.

601.13 DISTRICTS C-2 AND C-3.

- A. USES. In the C-2 and C-3 districts, accessory uses are as follows: parking areas, signs as permitted by this title, floodlighting, and other similar uses. Ground-mounted satellite dish antenna shall be no taller than 30 feet in height and shall be located behind the required yard setback of each district. Any satellite dish antenna mounted on the roof of a structure shall not extend more than 13 feet above the roof surface. No such antenna shall be utilized as a sign and any satellite dish antenna of a temporary nature shall not be on the premises over 72 hours. Additional requirement: All roof mounted satellite dish antenna shall be required to have a final development plan approved prior to the issuance of any permit such that the antenna is screened from view to the fullest extent possible without interfering with the operation of the antenna. All ground-mounted satellite dish antenna shall be required to have a final development plan approval prior to the issuance of any permit if said antenna is proposed to be located within 400 feet of any property zoned R-1 through R-5 as well as any equivalent planned zoning district. Said plan shall require the screening of the antenna to the fullest extent possible without interfering with the operation of the antenna. Washing and other passenger car cleaning shall be permitted as an accessory use in service stations, providing such washing and cleaning shall not utilize more than two car stalls or more than 30 percent of the floor area in any one station, shall be a part of the main building, and washing and cleaning operations shall utilize the same entrance drives as the service station and may use coin-operated or attendant-operated equipment, but not continuous line or conveyor-type washing equipment.

601.14 DISTRICTS M-1 and M-2.

- A. USES. In the M-1 and M-2 districts, accessory uses are as follows: parking and loading areas, signs as permitted by this title, security and screen fencing, radio and microwave towers to heights as set out in this title, gatehouse, loading equipment, employee recreation and other similar uses.

601.15 SPECIAL USES AND CONDITIONAL USES. The following are considered accessory uses associated with Special Uses and Conditional Uses permitted by this Ordinance.

Any of the accessory uses listed below may be specifically prohibited, or further controlled by restrictions, written into the Special Use Permit prior to its being approved.

- A. Motor Hotels - A restaurant, banquet rooms, liquor, notions and magazine counters, vending machines, beauty and barber shops, flower and gift shops, provided all are within the main building and designed to serve primarily the occupants and patrons of the motor hotel.
- B. Hospitals - Residential quarters for staff and employees, nursing or convalescent quarters, storage and utility buildings, food service and vending machines, laundry and other similar services for hospital personnel, visitors and patients.
- C. Utility Buildings - Outside storage of materials and equipment provided all outside storage is screened from view from off the premises."